

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	Chapter 7
	)	
EASTERN LIVESTOCK CO., LLC,	)	Case No. 10-93904-BHL-11
	)	
Debtor.	)	Hon. Basil H. Lorch III

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT  
WITH JSW FEEDLOT PURSUANT TO RULE 9019**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC (the "Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and JSW Feedlot ("JSW") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit A (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

**Introduction and Background**

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.
2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences<sup>1</sup> in the sums of the Estimated Net Exposure without further order of the Court.

4. Based on his investigation, the Trustee has concluded that JSW received not less than \$37,785.01 in transfers from the Debtor (collectively, the "Transfers"). On October 16, 2012, the Trustee made demand on JSW for avoidance and recovery of the Transfers (the "Preference Claim") and offered to settle the Preference Claim in the sum of \$34,006.51, representing ninety percent of JSW's Estimated Net Exposure as calculated by the Trustee. Subsequent to October 16, 2012, JSW has provided information to the Trustee that arguably reduces JSW's Estimated Net Exposure.

5. To avoid the cost, expense, and delay of litigation, JSW is willing to make immediate payment of \$1,000.00 (the "Settlement Amount") in satisfaction of the Preference Claim, provided the Court enters a final, nonappealable order approving this Settlement Motion (the "Settlement Order").

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

6. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Preference Claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

### **The Settlement**

7. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and JSW pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

### **Basis for Relief**

8. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation's probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

*In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d at 426 (citations omitted).

9. Although the Trustee believes there is legal and factual support for the Preference Claim, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the Preference Claim, (ii) the probability of success in prosecuting the Preference Claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

10. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

11. Notice of this Settlement Motion will be provided to all creditors, the United States Trustee, all counsel of record, and any other entity that the Court may direct, as provided in Bankruptcy Rules 2002 and 9019.

**WHEREFORE**, if no objections to this Settlement Motion are filed, the Parties request that the Court enter the Settlement Order approving the Settlement Agreement. A proposed form of order is attached as Exhibit B. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court. The Trustee requests that any notice of this motion include language that any objection to this Settlement Motion set forth with specificity any claim that the objecting party has to the Settlement Amount.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Wendy W. Ponader

*Counsel for James A. Knauer, Chapter 11 Trustee*

James M. Carr (#3128-49)  
Kevin M. Toner (#11343-49)  
Terry E. Hall (#22041-49)  
Dustin R. DeNeal (#27535-49)  
300 N. Meridian Street, Suite 2700  
Indianapolis, IN 46204-1782  
Telephone: (317) 237-0300  
Facsimile: (317) 237-1000  
jim.carr@faegrebd.com  
kevin.toner@faegrebd.com  
terry.hall@faegrebd.com  
dustin.deneal@faegrebd.com

Wendy W. Ponader (#14633-49)  
600 East 96th Street, Suite 600  
Indianapolis, IN 46240  
Telephone: (317) 569-9600  
Facsimile: (317) 569-4800  
wendy.ponader@faegrebd.com

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt  
davidabt@mwt.net

Mark A. Robinson  
mrobinson@vhlaw.com

Randall D. LaTour  
rdlatour@vorys.com

Daniel J. Donnellon  
ddonnellon@ficlaw.com

John W. Ames  
james@bgdlegal.com

Jeremy S Rogers  
Jeremy.Rogers@dinslaw.com

Meredith R. Thomas  
mthomas@daleeke.com

C. R. Bowles, Jr  
cbowles@bgdlegal.com

Jeffrey R. Erler  
jeffe@bellnunnally.com

John R. Carr, III  
jrciii@acs-law.com

Stephen A. Weigand  
sweigand@ficlaw.com

Robert Hughes Foree  
robertforee@bellsouth.net

Ivana B. Shallcross  
ishallcross@bgdlegal.com

William Robert Meyer, II  
rmeyer@stites.com

John Hunt Lovell  
john@lovell-law.net

Edward M King  
tking@fbtlaw.com

Bret S. Clement  
bclement@acs-law.com

John Frederick Massouh  
john.massouh@sprouselaw.com

Kim Martin Lewis  
kim.lewis@dinslaw.com

Deborah Caruso  
dcaruso@daleeke.com

Allen Morris  
amorris@stites.com

Charles R. Wharton  
Charles.R.Warton@usdoj.gov

David L. LeBas  
dlebas@namanhowell.com

Jessica E. Yates  
jyates@swlaw.com

Laura Day Delcotto  
ldelcotto@dlgfir.com

Ross A. Plourde  
ross.plourde@mcafeetaft.com

Todd J. Johnston  
tjohnston@mcjllp.com

Karen L. Lobring  
lobring@msn.com

Elliott D. Levin  
edl@rubin-levin.net

Sean T. White  
swhite@hooverhull.com

Michael W. McClain  
mike@kentuckytrial.com

James Edwin McGhee  
mcghee@derbycitylaw.com

Jerald I. Ancel  
jancel@taftlaw.com

David Alan Domina  
dad@dominalaw.com

Jill Zengler Julian  
Jill.Julian@usdoj.gov

Michael Wayne Oyler  
moyler@rwsvlaw.com

James E. Rossow  
jim@rubin-levin.net

Steven A. Brehm  
sbrehm@bgdlegal.com

James M. Carr  
james.carr@faegrebd.com

Shawna M. Eikenberry  
shawna.eikenberry@faegrebd.com

James A. Knauer  
jak@kgirlaw.com

Christie A. Moore  
cm@gdm.com

Peter M. Gannott  
pgannott@gannottlaw.com

Joseph H. Rogers  
jrogers@millerdollarhide.com

Andrew D. Stosberg  
astosberg@lloydmc.com

James Bryan Johnston  
bjtexas59@hotmail.com

Judy Hamilton Morse  
judy.morse@crowedunlevy.com

John Huffaker  
john.huffaker@sprouselaw.com

Kelly Greene McConnell  
lisahughes@givenspursley.com

Walter Scott Newbern  
wsnewbern@msn.com

Timothy T. Pridmore  
tpridmore@mcjllp.com

Sandra D. Freeburger  
sfreeburger@dsf-atty.com

John M. Rogers  
johnr@rubin-levin.net

Jay P. Kennedy  
jpk@kgirlaw.com

William E Smith  
wsmith@k-glaw.com

Thomas C Scherer  
tscherer@bgdlegal.com

Jeffrey J. Graham  
jgraham@taftlaw.com

Kent A Britt  
kabritt@vorys.com

Jeffrey L Hunter  
jeff.hunter@usdoj.gov

Jason W. Cottrell  
jwc@stuartlaw.com

James B. Lind  
jblind@vorys.com

Anthony G. Raluy  
traluy@fbhlaw.net

Jack S. Dawson  
jdawson@millerdollarhide.com

Terry E. Hall  
terry.hall@faegrebd.com

Erick P. Knoblock  
eknoblock@daleeke.com

Shiv Ghuman O'Neill  
shiv.oneill@faegrebd.com

Eric C. Redman  
ksmith@redmanludwig.com

James E. Smith  
jsmith@smithakins.com

Kevin M. Toner  
kevin.toner@faegrebd.com

James T. Young  
james@rubin-levin.net

John M. Thompson  
john.thompson@crowedunlevy.com

Matthew J. Ochs  
kim.maynes@moyewhite.com

T. Kent Barber  
kbarber@dlgfir.com

Kirk Crutcher  
kcrutcher@mcs-law.com

Theodore A Konstantinopoulos  
ndohbky@jbandr.com

Lisa Koch Bryant  
courtmail@fbhlaw.net

John David Hoover  
jdhoover@hooverhull.com

John R. Burns  
john.burns@faegrebd.com

Kayla D. Britton  
kayla.britton@faegrebd.com

David A. Laird  
david.laird@moyewhite.com

Trevor L. Earl  
tearl@rwsvlaw.com

Joshua N. Stine  
kabritt@vorys.com

Amelia Martin Adams  
aadams@dlgfir.com

Robert A. Bell  
rabell@vorys.com

Melissa S. Giberson  
msgiberson@vorys.com

U.S. Trustee  
ustpreion10.in.ecf@usdoj.gov

Dustin R. DeNeal  
dustin.deneal@faegrebd.com

Jay Jaffe  
jay.jaffe@faegrebd.com

Harmony A. Mappes  
harmony.mappes@faegrebd.com

Wendy W. Ponader  
wendy.ponader@faegrebd.com

Joe T. Roberts  
jratty@windstream.net

Robert K. Stanley  
robert.stanley@faegrebd.com

Andrea L. Wasson  
andrea@wassonthornhill.com

Christopher M. Trapp  
ctrapp@rubin-levin.net

Eric W. Richardson  
ewrichardson@vorys.com

Joshua Elliott Clubb  
joshclubb@gmail.com

Jennifer Watt  
jwatt@kgirlaw.com

I further certify that on December 13, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Ashley S. Rusher  
asr@blancolaw.com

Darla J. Gabbitas  
darla.gabbitas@moyewhite.com

/s/ Wendy W. Ponader